

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 2:09-cr-00222-27

JOSEPH ROBERT FARERI,

Defendant.

**MEMORANDUM OPINION AND ORDER**

Before the Court is Defendant Joseph Fareri's Motion for Reopening of Detention Hearing and/or Review of Detention [Docket 1067].

Defendant requests review of his pretrial detention on either of two grounds. First, he asks the Court to consider the length of time he has been detained and release him under a provision of the Speedy Trial Act, 18 U.S.C. § 3164(c). Second, and in the alternative, he seeks to reopen his detention hearing under 18 U.S.C. § 3142(f).

Defendant is not entitled to relief under § 3164(c) at this time. Section 3164(c) provides, with certain exceptions, that a defendant should not be detained in excess of ninety days. However, days found to be excludable for Speedy Trial Act purposes under 18 U.S.C. § 3161(h) likewise are excludable under § 3164.

Although Defendant has been in continuous custody for greater than ninety calendar days, the Court previously has found the majority of those days to be excludable under § 3161(h). (*See, e.g.*, Dockets 568, 1044.) With the excludable days disregarded, Defendant has been in detention fewer

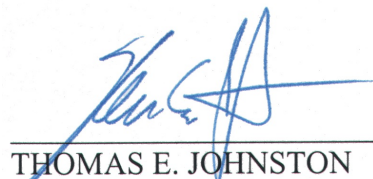
than ninety days. Accordingly, Defendant's motion [Docket 1067] is **DENIED IN PART** to the extent that he seeks review under § 3164.

In the alternative, Defendant seeks to reopen his detention hearing under 18 U.S.C. § 3142(f). For reasons appearing to the Court, this remaining portion of Defendant's motion is **REFERRED** to United States Magistrate Judge Mary E. Stanley for the purpose of doing all things proper to hear and determine or make recommendations for disposition of this motion including, without limitation, conducting a hearing on the motion, if necessary, and entering into the record a written order setting forth the disposition of the motion or recommendation for disposition, as the case may be. 28 U.S.C. §§ 636(b)(1)(A), 636(b)(1)(B).

**IT IS SO ORDERED.**

The Court **DIRECTS** the Clerk to send a copy of this Order to the Defendant and counsel, and the United States Attorney.

ENTER: February 26, 2010

  
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THOMAS E. JOHNSTON  
UNITED STATES DISTRICT JUDGE